

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3084  
Administrative Law Judge Division  
March 21, 2002

**R E S O L U T I O N**

RESOLUTION ALJ 176-3084. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

## **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

## **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on March 21, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director

LORETTA M. LYNCH  
President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3084 (3/21/02)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A02-02-036</b> RURALWEST - WESTERN RURAL BROADBAND, INC., for a Certificate of Public Convenience and Necessity to Offer Local Exchange, Access, and Interexchange Services	Ratesetting	Ratesetting	NO
<b>A02-03-001</b> PACIFIC ENERGY GP, INC., PACIFIC ENERGY PARTNERS, L.P., PACIFIC PIPELINE SYSTEM, LLC, for an Ex Parte Order pursuant to Public Utilities Code Section 854(a) Authorizing Pacific Energy Partners, L.P. and Pacific Energy GP, Inc. to Acquire, Indirectly, Pacific Pipeline System, LLC, as part of an Internal Restructuring Establishing a Master Limited Partnership	Ratesetting	Ratesetting	NO
<b>A02-03-003</b> CITY OF BRENTWOOD, to Construct a new At-Grade Crossing at the Extension of Sand Creek Road, in the vicinity of Mile Post 60.54 of the Union Pacific Railroad Company in the City of Brentwood, County of Contra Costa, State of California	Ratesetting	Ratesetting	NO
<b>A02-03-004</b> DIVERSIFIED PARATRANSIT, INC., INLAND EXPRESS SHUTTLE, INC., Inland Express Shuttle, Inc. to Acquire, and Diversified Paratransit, Inc. to Transfer, a Passenger Stage Certificate of Public Convenience and Necessity and certain other assets pursuant to Section 851 et seq., California Public Utilities Code	Ratesetting	Ratesetting	NO
<b>A02-03-005</b> ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, for an Order authorizing the Construction of three Railroad Tracks underneath the Sepulveda Boulevard Grade Separation (CPUC Number 114-15.20-A) in the City of Carson, California	Ratesetting	Ratesetting	NO
<b>A02-03-006</b> MERCEDNET, INC. (U 6533-C), for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A02-03-007</b> ZTG INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3084 (3/21/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-03-008</b> SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an Order Approving Safety Appliances to be used at the rail to rail crossing south of Auzerais Avenue (82D-45.2T), the junction of the Union Pacific Railroad freight railroad spur line with the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of Santa Clara	Ratesetting	Ratesetting	NO
<b>A02-03-010</b> SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), for an Order Approving Power Purchase Agreements with Certain Qualifying Facilities	Ratesetting	Ratesetting	NO
<b>A02-03-012</b> LEVEL 3 COMMUNICATIONS, LLC, to Expand its Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services in the Service Territories of Citizens Telecommunications Company of the Golden State, Inc.; Evans Telephone Company; and Sierra Telephone Company, Inc.	Ratesetting	Ratesetting	NO
<b>A02-03-013</b> PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E), for an Order Finding Master License Agreements for Wireless Communication Antenna Attachments entail uses within General Order 69-C, or, in the alternative, for Commission Approval under Public Utilities Code Section 851 of Wireless Antenna Attachments under Master License Agreements	Ratesetting	Ratesetting	NO
<b>A02-03-014</b> EVERYDAY COMMUNICATIONS CORP., for a Certificate of Public Convenience and Necessity to Provide Resold Competitive Local Exchange Services in California	Ratesetting	Ratesetting	NO
<b>A02-03-015</b> ABRY PARTNERS, LLC, EVANS TELEPHONE COMPANY, for Approval of the Indirect Transfer of Control of Evans Telephone Company (U 1008-C) to ABRY Partners, LLC	Ratesetting	Ratesetting	NO
<b>A02-03-016</b> SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Approval of Fuel Hedging Cost Recovery	Ratesetting	Ratesetting	YES

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3084 (3/21/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A02-03-018</b> ELHAMAKI, EL SAYED, FAYAD, OKAB, dba SUPERPORTER EXPRESS, to Transfer his PSC-11569 Certificate to El Sayed Elhamaki; and to establish a Zone of Rate Freedom	Ratesetting	Ratesetting	NO
<b>A02-03-019</b> CALIFORNIA-AMERICAN WATER COMPANY, for an order authorizing establishment of a Memorandum Account to record costs associated with security measures needed to address potential terrorist attacks	Ratesetting	Ratesetting	YES